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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

YOK HING LAW, Plaintiff and Appellant, v. CITY OF HIGHLAND et al., Defendants and Respondents.	E053802 (Super.Ct.No. CIVDS 1010923) O P I N I O N

APPEAL from the Superior Court of San Bernardino County. David Cohn, Judge. Affirmed.

Yok Hing Law, in pro. per., for Plaintiff and Appellant.

Craig A. Steele; Richards, Watson & Gershon, Steven R. Orr, Ginetta L. Giovinco, and Maricela E. Marroquin for Defendants and Respondents.

I. INTRODUCTION

Plaintiff and appellant Yok Hing Law sued defendants and respondents City of Highland (the City) and one of its senior code enforcement officers, Vivienne Muro

(defendants), for slander, libel, and other torts based on statements Muro made during or in connection with a public hearing. Law also petitioned the trial court for a writ setting aside a citation imposing a $500 fine for Law's failure to remove graffiti from a property she owned in the City. The trial court granted defendants' special motion to strike Law's tort claims, and Law appeals. We affirm the order granting the special motion to strike the tort claims.

Law's tort claims are based on statements Muro made during or in connection with a hearing before the Highland Public Nuisance Hearing Board (the Board) on the graffiti citation, which were reported in a local news article. As such, the claims are subject to the anti-SLAPP statute. (Code Civ. Proc., § 425.16, subd. (e)(1), (2).)[1]

Law also failed to make a prima facie evidentiary showing that her tort claims had merit. (Code Civ. Proc., § 425.26, subd. (b).) Defendants presented evidence that Muro's alleged defamatory statements were absolutely privileged under Civil Code section 47, because all of the statements were made at the Board hearing. Law presented no competent evidence that Muro made any statements to the press or to other nonparticipants outside of the hearing. Law's writ petition is unaffected by this appeal.

[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

II. BACKGROUND

A. *The Graffiti Citation*

In 2004, Law and her coplaintiff Kit-Sing Mak[2] purchased a property located on McKinley Avenue in the City. On April 12, 2010, Muro issued a "third" citation denoted number 04316, imposing a $500 fine for the owners' alleged failure to remove graffiti on the property for 10 days or more, in violation of section 8.32.020 of the Highland Municipal Code.[3] The owners appealed the citation to the Board, and the Board upheld the citation at a July 14, 2010, hearing.

At the hearing, Muro presented a "staff report" detailing the City's history with the owners and recommending that the Board uphold the graffiti citation.[4] The staff report stated the owners had previously been given "numerous verbal and written warnings and Citations" to maintain their property and had had "ample time to comply" with the April 12 citation.

Muro told the Board that on March 1, 2010, she issued a "warning" citation to the owners, advising them that another citation imposing a $500 fine would be issued unless

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[2] Kit-Sing Mak later dismissed her action against the City and Muro, and is not a party to this appeal.

[3] At the time in question, section 8.32.020.A.8 of the Highland Municipal Code stated: "A public nuisance is created by every building or structure which: [¶] . . . [¶] . . . Has graffiti . . . which remain on the exterior of any building or structure and which are visible from a public street for 10 days or more . . . ."

[4] The trial court took judicial notice of the staff report and a transcript of the July 14 Board hearing.

the graffiti was removed, and the graffiti had not been removed when she reinspected the property on April 12. Thus, on April 12, Muro issued a "third" citation imposing the $500 fine.

The April 12 citation appeared to give the owners until May 12 to remove the graffiti, and Muro agreed there was no graffiti on the property on May 13. Muro argued, however, that the April 12 citation and $500 fine should be upheld because the March 1 graffiti had not been removed by April 12. Muro explained that the April 12 citation did not state "that if you comply by [May 12] the citation is voided. It just says you must comply by [May 12]," and the owners had been given many warnings, before March 1, to keep their property free of graffiti.

For her part, Law told the Board she promptly removed the graffiti that was on the property on March 1; the graffiti Muro observed on the property on April 12 was new and different graffiti; and Law promptly removed the April 12 graffiti. Law argued there was no showing that the April 12 graffiti had been on the property for at least 10 days, and the citation imposing the $500 fine was therefore unlawful.

B. *The July 17 News Article*

On July 17, 2010, the Highland Community News published an article reporting on the July 14 hearing, entitled "Nuisance appeal rejected." The article attributed various statements to Muro, which Law later claimed were false and defamatory. The article stated:

"Highland Code Enforcement officers have been giving warnings and citations . . . to Yok Law and Kit-Sing Mak since 2004 concerning their property at 7835 McKinley Ave[nue]. [¶] It started with a re-roofing project being done without a permit, followed by transients living in substandard quarters, debris in and around the property and graffiti on the walls. The owners do not live on the property. [¶] Senior Code Enforcement Officer Vivienne Muro reported 76 contacts with the owners over the past six years through May 13. [¶] 'The city's Code Enforcement and Building and Safety Divisions have been working with the property owners since 2004,' wrote Muro in her report to the Public Hearing Nuisance Board for its July 14 hearing. 'The property owners have been given numerous verbal and written warnings and citation[s] to maintain their property. The property owners have been given ample time to comply.' [¶] The owners appeared before the board to plead their case, saying they had complied with the city's demands and asking that the latest citation be dropped. [¶] 'The property is in compliance now,' said Muro. 'But it's like a speeding ticket. Just because you're not speeding anymore doesn't mean you don't have to pay the fine.' [¶] The board denied the appeal and upheld the citation."

C. *Law's Original Writ Petition and Complaint*

In August 2010, Law petitioned the trial court for a writ setting aside the Board's resolution upholding the citation on the ground there was no evidence that the graffiti that was on the property on April 12 had been on the property for 10 days or more. Law also alleged two causes of action for slander and libel against Muro based on statements Muro

made to the Board at the July 14, 2010, hearing, or to the press after the hearing, and which appeared in the July 17 news article.

In December 2010, the trial court denied the City and Muro's special motion to strike the slander and libel claims on the ground defendants failed to meet their initial burden of showing that all of Muro's alleged defamatory statements fell within the scope of section 425.16. The City did not submit any declarations or other evidence in support of the motion. On the same date, the trial court granted the City's demurrer to the slander and libel claims against Muro, with leave to amend.[5]

D. *Law's Present Writ Petition and Complaint*

In January 2011, Law filed a first amended petition for a writ of mandate to set aside the Board's resolution upholding the citation (first cause of action). The amended pleading further alleged 10 tort causes of action against the City and Muro: slander per se (second), slander per quod (third), libel per se (fourth), libel per quod (fifth), negligence (sixth), negligent hiring, supervision and training (seventh), intentional infliction of emotional distress (eighth), negligent infliction of emotional distress (ninth), breach of statute (tenth), and vicarious liability (eleventh).

Like the original slander and libel claims, the newly alleged tort claims were based on statements Muro allegedly made to the Board at the July 14, 2010, hearing or to the press after the hearing, and which appeared in the July 17 news article. Law alleged the

[5] This court granted Law's motion to augment the record on appeal with a copy of the demurrer.

statements were false and defamatory and damaged her business's reputation as a health care provider.

E. *Defendants' Second Special Motion to Strike*

In February 2011, defendants filed a second special motion to strike the tort claims alleged in Law's amended pleading on the ground the claims were based on statements Muro made at or in connection with an official proceeding, or in connection with an issue under consideration or review in an official proceeding. (Code Civ. Proc., § 425.16, subd. (e)(1), (2).) Defendants also claimed there was no probability Law would prevail on her tort claims because, among other reasons, the alleged statements were absolutely privileged under Civil Code section 47.

In support of their motion, defendants submitted the declarations of Muro and Charles Roberts, editor of the Highland Community News and author of the July 17, 2010, news article. Roberts affirmed he "did not interview [Ms.] Muro in connection with the July 17, 2010 article," and further stated that "[a]ll of the statements in the July 17, 2010 article that are attributed to Ms. Muro were statements made by Ms. Muro during the Board hearing or information that [Roberts] obtained from the Staff Report that was submitted to the Board by Ms. Muro." Muro affirmed she was "responsible for attending and making presentations at Public Nuisance Hearing Board hearings" as a senior code enforcement officer for the City. She attended the July 14, 2010, hearing, which was open to the public, made a presentation concerning Law's property at the hearing, and submitted a staff report for the Board's consideration. Muro affirmed she

"never made any comment to the press or [had] been interviewed by the press regarding [Law's] property," or the July 17 appeal before the Board.

In opposition to the motion, Law submitted her declaration and filed an untimely declaration of Khor Chin Lim only two days before the originally scheduled hearing on the motion and after defendants filed their reply brief. Law averred she attended the July 14 hearing and did not hear Muro tell the Board she had reported "76 contacts with the owners over the past six years through May 13." Thus, Law claimed Muro must have made that particular false and defamatory statement other than at the hearing. Lim averred she was present at the July 14 hearing; she talked to "several people" before and after the hearing; she did not see any "staff report" tendered at the hearing; during the hearing, Muro did not state she made "'76 contacts with the owners over the past six years . . . through May 13'"; and Lim did not see any reporters at the hearing. The trial court recognized that Lim's declaration was untimely because it was filed after the City filed its reply brief. The trial court sustained evidentiary objections to various parts of the Law and Lim declarations on relevance, lack of personal knowledge, and other grounds.

The trial court granted the motion, agreeing that Muro's alleged defamatory statements fell within the scope of subdivision (e)(1) and (2) of Code of Civil Procedure section 425.16, and that the statements were absolutely privileged under Civil Code section 47, subdivision (b) because they were made at an administrative hearing. As the

prevailing parties on the motion, defendants were awarded $7,687.50 in attorney fees.[6] (Code Civ. Proc., § 425.16, subd. (c)(1).) Law timely appealed. (Code Civ. Proc., § 425.16, subd. (i).)

III. DISCUSSION

A. *The Anti-SLAPP Statute and Standard of Review*

"Section 425.16 is intended 'to provide for the early dismissal of unmeritorious claims filed to interfere with the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.' [Citation.] It authorizes the filing of a special motion that requires a court to strike claims brought 'against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution . . . unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.' (§ 425.16, subd. (b)(1).)" (*Alpha & Omega Development, LP v. Whillock Contracting, Inc.* (2011) 200 Cal.App.4th 656, 663.)

"[S]ection 425.16 '"requires that a court engage in a two-step process when determining whether a defendant's anti-SLAPP motion should be granted. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one 'arising from' protected activity. [Citation.] If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a

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[6] Defendants also demurred to Law's tort claims as pleaded in her second through eleventh causes of action, but the trial court ruled the demurrer was "moot" after it granted the special motion to strike the claims.

probability of prevailing on the claim." [Citation.]' [Citation.]" (*Alpha & Omega Development, LP v. Whillock Contracting, Inc., supra,* 200 Cal.App.4th at p. 663.)

We review an order granting an anti-SLAPP motion de novo. "'In other words, we employ the same two-pronged procedure as the trial court in determining whether the anti-SLAPP motion was properly granted.' [Citation.]" (*Alpha & Omega Development, LP v. Whillock Contracting, Inc., supra,* 200 Cal.App.4th at p. 663.)

B. *The Second Special Motion to Strike Was Properly Granted*

On this appeal, Law claims defendants' second motion to strike was erroneously granted because defendants made inconsistent statements in their first and second motions to strike concerning when and to whom Muro made the alleged defamatory statements. Law claims that in their first motion defendants indicated Muro made some of her alleged defamatory statements to the press or to other nonparticipants either before or after the July 14 hearing. But in their second and present motion, defendants submitted the declarations of Muro and Roberts, inconsistently claiming that Roberts prepared the July 17 news article based *solely* on Muro's staff report and her statements to the Board at the July 14 hearing, and that Muro made no statements outside the hearing concerning Law's property to Roberts or to any other nonparticipants.

Law's claim is without merit for at least two reasons. First, the record on appeal does not include a copy of defendants' first special motion to strike; thus Law has not supported her claim with an adequate record. (See *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1011 [Fourth Dist., Div. Two].) Nor has Law pointed to any

document in which defendants made a judicial admission that Muro made any of the alleged defamatory statements other than at the July 14 Board hearing.

Furthermore, on this record the second special motion to strike was properly granted. First, defendants met their threshold burden of showing that all of Muro's alleged defamatory statements fell within the scope of section 425.16, subdivision (e)(1) and (2). Subdivision (e) of section 425.16 defines an "'act in furtherance of a person's right of petition or free speech'" as including "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made *in connection with an issue under consideration or review* by a legislative, executive, or *judicial body, or any other official proceeding authorized by law* . . . ." (§ 425.16, subd. (e), italics added.)

Subdivision (e)(1) and (2) of section 425.16 therefore encompass "*any* writing or statement made *in, or in connection with* an issue under consideration or review by, the specified proceeding or body." (*Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1047, second italics added ["[A]ll that matters is that the First Amendment activity take place in an official proceeding or be made in connection with an issue being reviewed by an official proceeding"].) In support of their second motion to strike, defendants demonstrated that all of Muro's alleged defamatory statements were made either at or in connection with the July 14 Board hearing. Thus, defendants showed the statements fell within the broad scope of section 425.16, subdivision (e)(1) and (2).

After defendants showed that Law's tort claims were based on protected speech and petition activities, the burden shifted to Law to "state[] and substantiate[] a legally sufficient claim." (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 20.) Law had to show her tort claims were """both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited."""" (*Ibid*.) In determining whether Law made this showing, the court was required to consider the pleadings and evidentiary submissions of both parties. (*Ibid.*; § 425.16, subd. (b)(2).) The court was required to grant the motion if the evidence supporting the motion defeated Law's attempt to establish evidentiary support for her claims. (*Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 273-274.)

Here, defendants presented competent evidence that Muro's alleged defamatory statements were absolutely privileged, and Law presented no competent evidence to the contrary. Civil Code section 47 states: "A privileged publication or broadcast is one made: [¶] . . . [¶] (b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to [Code of Civil Procedure section 1084 et seq.]" The privilege applies if the material has "some proper connection or relation to the proceeding and in achieving its objectives." (*Tiedemann v. Superior Court* (1978) 83 Cal.App.3d 918, 924-925.) Statements to the press or to other nonparticipants in the proceeding are generally not privileged under section 47, subdivision (b), however. (*Rothman v. Jackson* (1996) 49 Cal.App.4th 1134, 1141

[statements to press are not privileged unless they serve the purposes of the litigation process]; see also *Hawran v. Hixon*, *supra*, 209 Cal.App.4th at p. 283.)

Defendants presented competent evidence that all of Muro's alleged defamatory statements were made to the Board *at* the July 14 hearing and that none of the statements were made to Roberts or to any other nonparticipant outside the hearing. Roberts averred he prepared the July 17 new article based *solely* on the statements Muro made to the Board at the July 14 hearing and on the staff report, and he did not interview Muro for the article. Muro likewise averred she did not speak to Roberts or to any other nonparticipants concerning Law's property before or after the hearing. Thus, defendants demonstrated that Muro's alleged defamatory statements fell squarely within the absolute privilege of Civil Code section 47, subdivision (b)(3) and (4).

For her part, Law merely speculates that Muro made defamatory statements concerning Law's property to Roberts or to some other nonparticipant outside the July 14 hearing. To be sure, the July 17 news article stated Muro had "76 contacts" with the owners between 2004 and May 13, 2010; the transcript of the July 14 hearing shows Muro did not make *that* statement at the hearing; and the staff report contains no such express statement. But Roberts averred he prepared the July 17 news article based solely on Muro's statements to the Board at the hearing *and* on the staff report. And Roberts could have easily deduced from the staff report that Muro had "76 contacts" with the owners of the property between 2004 and May 13, 2010. The staff report lists numerous

dates between 2004 and May 13, 2010, and describes the contents of each contact with the owners on those dates.

Thus, on this record, the court correctly concluded that Muro's alleged defamatory statements were absolutely privileged under Civil Code section 47, subdivision (b)(3) and (4), and Law did not make a sufficient evidentiary showing to support her tort claims.[7]

IV. DISPOSITION

The order striking Law's tort claims as alleged in the second through eleventh causes of action of her first amended petition and complaint under section 425.16 is affirmed. Defendants shall recover their costs on appeal.

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KING
J.

We concur:

RICHLI
Acting P. J.

CODRINGTON
J.

[7] In light of our conclusion that all of Muro's alleged defamatory statements were absolutely privileged under Civil Code section 47, subdivision (b)(3) and (4), it is unnecessary to address defendants' alternative defenses, including their claim that they are statutorily immune from liability for Law's tort claims.